



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Richard C. Clough - Overpayment of Final Pay and  
Leave Upon Retirement - Waiver

**File:** B-230423

**Date:** March 13, 1989

### DIGEST

1. An employee was erroneously retained on the payroll by his agency for 2 days beyond his retirement resulting in an overpayment for final pay and leave. Waiver of the overpayment is denied, notwithstanding the employee's lack of fault, since the agency promptly notified the employee of the error and requested repayment. In these circumstances it is not against equity and good conscience, as provided by the waiver statute, to require repayment.

2. An employee asserted that because of changes in tax laws, his tax liability was increased due to his agency's error in overpaying him in 1986 for which he made refund in 1987, and that should be a basis for waiving the overpayment. The application of the tax laws to individual cases is a matter for the revenue authorities and is not a basis for waiving an erroneous payment of pay pursuant to 5 U.S.C. § 5584.

### DECISION

Mr. Richard C. Clough, a former employee of the Federal Aviation Administration (FAA), appeals our Claims Group's denial of his request for waiver of erroneous payments he received during December 1986 following his retirement. The overpayments were for 16 hours of regular pay and 8 hours of pay for annual leave Mr. Clough received due to the agency's error in retaining him in a pay status following his retirement. We sustain the denial of waiver, as explained below.

### BACKGROUND

Mr. Clough retired from his position as a staff accountant, GS-14, in the FAA's Office of Accounting on December 3, 1986. Because of an administrative error, the agency failed to transfer Mr. Clough to a nonpay status until after the

biweekly pay period ending December 6, and, as a result, erroneously compensated him for 16 hours (December 4 and 5). In addition to being retained in a pay status for that entire pay period, he was erroneously credited with 8 hours of additional annual leave for the following pay period, payment for which was included in his lump-sum leave payment. These payments were made directly into Mr. Clough's bank account in the latter part of December 1986.

On December 19, his former supervisor informed Mr. Clough by telephone of the errors and the resultant overpayments. At that time, Mr. Clough stated that he was unaware of the overpayments since he had not seen his Time and Attendance Report or Earnings and Leave Statement for the previous pay period. In addition, he indicated that since his paychecks were deposited directly into his bank account through electronic fund transfers and he had not yet received his monthly bank statement, he was not then aware of the extra amounts deposited. On January 23, the agency billed Mr. Clough for repayment in the amount of \$474.61, which represented the gross overpayment less amounts collected for tax and retirement withholdings. Mr. Clough remitted the net overpayment of \$474.61 to the agency on January 27, 1987.<sup>1/</sup>

By letter dated February 13, 1987, Mr. Clough requested a waiver and refund under 5 U.S.C. § 5584 of the overpayments on the grounds that they resulted solely through the agency's negligence and were not attributable to any wrongdoing on his part. In addition, he complained that the agency's overpayment in 1986, which he was required to repay in 1987 unfairly increased his tax liability. This apparently was due to the reduction in tax rates in 1987 and the placing of a threshold amount on the miscellaneous deductions allowed for that year. The record shows, however, that the agency queried the Internal Revenue Service concerning Mr. Clough's situation and apparently followed the Service's directions in the issuance of Mr. Clough's reports of wages and earnings statements (forms W-2).

The agency denied Mr. Clough's request for waiver because it determined that collection would not be against equity and good conscience since the agency's prompt notification of the error precluded him from relying on the accuracy of the payments to his detriment. Our Claims Group sustained the agency's denial of waiver.

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<sup>1/</sup> Subsequently due to several adjustments, the agency found that it had overcollected and that Mr. Clough was due a refund of \$2.91, which we assume has been repaid to him.

## DISCUSSION

The Comptroller General is authorized by 5 U.S.C. § 5584 to waive claims arising out of erroneous payments of pay and allowances if there is no "indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee" and collection would be "against equity and good conscience and not in the best interests of the United States."

In this case the overpayments occurred due to agency error and there appears to be no indication of fraud, misrepresentation, fault, or lack of good faith on Mr. Clough's part. These circumstances alone, however, do not entitle Mr. Clough to waiver.

As the statutory language indicates, whether to grant waiver under 5 U.S.C. § 5584 is not to be decided simply as a matter of right whenever an employee innocently receives compensation to which he is not entitled, but is to be decided on principles of equity and fairness under the circumstances present in each case. Accordingly, we have held that where an agency's prompt notification of an overpayment to an employee precludes him from relying on the accuracy of the payment to his detriment, waiver is inappropriate since collection of the payment would not be against equity and good conscience despite the absence of fault on the part of the employee. See Harold G. Wells, B-188492, Feb. 16, 1978; and Seymour Zirin, B-204974, June 24, 1982. In this case the agency promptly notified Mr. Clough by telephone of the error and provided him with a written explanation the following month.

As to Mr. Clough's assertion that his tax situation also should be considered as a factor supporting waiver of his debt, the application of the tax laws to an individual's income is a matter for consideration by the revenue authorities and generally is not within our jurisdiction. Also, the tax consequences of collection of erroneous payments are not matters specifically addressed by the waiver statutes. Therefore, considering the many possible tax liability variables which may apply in individual cases, it is our view that this is not a matter upon which to base a decision to waive a debt which otherwise does not meet the requirements for waiver.

Accordingly, for the reasons explained above, we decline to grant waiver in Mr. Clough's case.

*for Milton J. Fowler*  
Comptroller General  
of the United States